



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: International Foods Retort Company

File: B-230921

Date: July 14, 1988

DIGEST

Protest against determination by agency to exclude protester as a planned producer for a future procurement is not for consideration under General Accounting Office's bid protest function since protester's objection does not pertain to a particular solicitation or to the proposed award or award of a particular contract and thus is not within the scope of the bid protest provisions of the Competition in Contracting Act of 1984.

DECISION

International Foods Retort Company protests the decision by the Defense Logistics Agency (DLA) to exclude the firm from competing as a planned producer for the proposed fiscal year 1989 Meals-Ready-to-Eat (MRE) program. The protester disputes DLA's conclusion that the firm does not possess the necessary technical, production, quality assurance or financial capability necessary to be included as a planned producer for the proposed fiscal year 1989 program. International also contends that DLA's actions evidence a failure to provide procurement opportunities to small disadvantaged businesses. We dismiss the protest.

The MRE is a military unique item not available in the commercial sector, and DLA thus has determined that it is necessary to limit awards to planned producers who have Industrial Preparedness Program Planning schedule agreements with the agency in order to maintain an industrial base capable of meeting mobilization requirements in case of war or national emergency. To be designated a planned producer, a firm must indicate its willingness to produce the items in a national emergency, and government production planning officials must approve the firm following a survey of the firm's facilities. See generally Lister Bolt & Chain, Ltd., B-224473, Sept. 15, 1986, 86-2 CPD ¶ 305.

042720

Here, DLA concluded that International was not qualified for planned producer status based on (1) furnishing nonconforming items and making late deliveries as a 1987 MRE planned producer; and (2) a September 1987 preaward survey finding the firm nonresponsible to perform a 1988 MRE contract, and a subsequent Small Business Administration denial of a certificate of competency.

The bid protest provisions of the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. §§ 3551-3556, provide that the Comptroller General shall decide a protest concerning an alleged violation of a procurement statute or regulation if the protest is filed in accordance with the bid protest provisions of CICA. 31 U.S.C. § 3551 (Supp. IV 1986). These provisions define a "protest" as:

"a written objection . . . to a solicitation by an executive agency for bids or proposals for a proposed contract for the procurement of property or services or a written objection by an interested party to a proposed award or the award of such a contract."

Since International's objection to the agency's decision to exclude it as a planned producer for the fiscal year 1989 MRE program do not pertain to a particular solicitation or to the proposed award or award of a particular contract, they do not constitute a protest within the meaning of CICA and we will not consider them under our bid protest function. See A. Moe & Co., Inc., B-219762, 64 Comp. Gen. 755, (1985), 85-2 CPD ¶ 144; see also Bid Protest Regulations, 4 C.F.R. § 21.1(a) (1988).

We do point out for the protester's information that we have held that decisions as to which producers should be included in mobilization base procurements and the restrictions necessary to meet the needs of industrial mobilization involve complex judgments that generally will be left to the discretion of the military agencies. Wayne H. Coloney Co., Inc., 64 Comp. Gen. 260 (1985), 85-1 CPD ¶ 186; Urdan Industries, Ltd., B-222421, Jun. 17, 1986, 86-1 CPD ¶ 557. Our Office will question these decisions only if the record convincingly shows that the agency has abused its discretion. Martin Electronics, Inc., 65 Comp. Gen. 59 (1985), 85-2 CPD ¶ 504. Based on the record here, although

International has invoked the contract disputes procedures to defend its performance under prior contracts, it does not appear that DLA acted arbitrarily in relying on its view of the firm's prior performance and the recent nonresponsibility determination.

The protest is dismissed.

Michael R. Isolden
for

Ronald Berger
Deputy Associate
General Counsel